

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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REPUBLIC RESTAURANT, INC., :

Plaintiff, :

vs. :

Case No. 03-CV-12649-NMG

HAYDAN WASHINGTON STREET, INC., :
d/b/a PHO REPUBLIQUE and JACK H. :
BARDY, :

Defendants. :

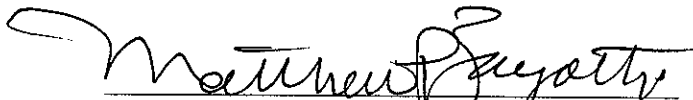
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**PLAINTIFF REPUBLIC RESTAURANT, INC.'S OPPOSITION TO
DEFENDANTS' CROSS-MOTION FOR A DISMISSAL UPON CONDITIONS**

The Plaintiff Republic Restaurant, Inc. hereby opposes Defendants' Cross-Motion for a Dismissal Upon Conditions. In support of this opposition, and for reasons more fully set forth in the attached Declaration of Jeffrey Tamarin in Opposition to Defendants' Cross Motion for a Dismissal Upon Conditions and in Further Support of Plaintiff's Rule 41 Motion to Dismiss Without Prejudice filed herewith; and as stated in Plaintiff's previously filed Rule 41 Motion to Dismiss and Declaration of Jeffrey Tamarin in support thereof; the Plaintiff states as follows:

1. No prejudice will accrue to Defendants by voluntarily dismissing this action pursuant to Fed. R. Civ. P. 41(a)(2).
2. There is no evidence that the Plaintiff Republic Restaurant, Inc. acted in bad faith in commencing either this action or the Texas litigation. Tamarin Declaration in Opposition to Defendants' Cross-Motion, at ¶¶ 2-11.

3. Under the circumstances of this case, the imposition of costs and attorney's fees is not necessary to protect the Defendants. See Puerto Rico Maritime Shipping Authority v. Leith, 668 F.2d 46, 51 (1st Cir. 1981) (holding that District Court did not abuse its discretion in granting the plaintiff's motion for voluntary dismissal without imposing any terms or conditions and without holding a hearing on plaintiff's motion).

WHEREFORE, based on the foregoing points and authorities the Plaintiff Republic Restaurant, Inc. respectfully requests that this Honorable Court enter an order denying the Defendants' Cross-Motion for a Dismissal Upon Conditions.



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Dated: August 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document(s) was served upon the attorney of record for each other party by ~~hand~~ delivery - US Mail on August 4, 2005.

